

1 Monday, 15 July, 1946

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4 INTERNATIONAL MILITARY TRIBUNAL  
5 FOR THE FAR EAST  
6 Court House of the Tribunal  
7 War Ministry Building  
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,  
10 at 0930.

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12 Appearances:

13 For the Tribunal, same as before.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

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18 (English to Japanese and Japanese  
19 to English interpretation was made by the  
20 Language Section, IMTFE.)  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session  
3 and ready to hear any matter brought before it.

4 THE PRESIDENT: All the accused are present  
5 except OKAWA and HIRANUMA, who are represented by  
6 counsel.

7 I have here a certificate from the prison  
8 medical officer at Sugamo Prison. He says:

9 "This is to certify that Kiichiro HIRANUMA  
10 was placed in the 361st Station Hospital on  
11 12 July 1946 for medical observation and treatment."

12 Let that be recorded and filed.

13 Chief Justice Higgins, of the Massachusetts  
14 Superior Court, with the consent of the Supreme Com-  
15 mander, has withdrawn as a Member of the Tribunal.  
16 Since his arrival in Japan a few months ago his  
17 immediate successor in office died, and the present  
18 Acting Chief Justice is in advanced years and poor  
19 health and Chief Justice Higgins does not feel justi-  
20 fied in placing the added burden of administering the  
21 affairs of a large court of thirty-one members upon  
22 him for the period of time it will take to try this  
23 case. I add my personal regrets at the retirement  
24 of Chief Justice Higgins.

25 We notice a change in the temperature of this

1 court this morning, due, I understand, not to the  
2 installation of air conditioning but to the operation  
3 of some other appliance. No Member of this court  
4 requested that air conditioning be installed. That  
5 was directed by the Supreme Commander, who had the  
6 advantage of medical reports. We are seeing that the  
7 Supreme Commander's directions are carried out.

8 Undoubtedly air conditioning is necessary  
9 in this building. This court is situated in the  
10 well of the building, ventilation is almost com-  
11 pletely shut out, the court is usually crowded and  
12 for a considerable portion of the time we have a  
13 blaze of lights more profuse than anything outside  
14 Hollywood.

15 Does counsel desire to mention any matter?

16 MR. JUSTICE MANSFIELD: If the Tribunal  
17 please, the question of the affidavits and reports  
18 in connection with the prisoner-of-war phase of the  
19 case was to be reconsidered by the Court. I ask  
20 leave to bring the matter and some further facts  
21 before the Court this morning.

22 I point out that the affidavits were not  
23 prepared for use in this particular trial, but were  
24 prepared as part of an investigation over the whole  
25 of the areas in which prisoners of war were detained.

1 Most of the affidavits, therefore, deal with condi-  
2 tions in several areas or several camps. In most  
3 cases the excerpts which the prosecution desires to  
4 use in evidence are taken from those affidavits and  
5 relate to one and possibly two of the areas referred  
6 to. The contents of the affidavits as to other  
7 areas are to that extent not material to the matter  
8 which is being used in the affidavit by the prosecu-  
9 tion.

10 As an example, I have two examples here.  
11 The first one is a report consisting of thirty-five  
12 pages out of which three pages referring to two  
13 camps the prosecution desires to use. The other one  
14 is an affidavit dealing with conditions in Hong Kong  
15 and Japan, and the prosecution merely desires to use  
16 three and a half out of fifteen pages, confining it  
17 to conditions at Hong Kong. The whole affidavit will,  
18 of course, be the evidence, the original evidence,  
19 and that, of course, will be lodged in court and will  
20 be available for the defense to peruse.

21 The number of pages of excerpts is approxi-  
22 mately 1500. A hundred copies of those have to be  
23 made, and that will amount to 150,000 pages. If  
24 copies of the whole affidavits are put in the number  
25 of pages will amount to approximately 10,000, and if

1 a hundred copies have to be made of the whole of the  
2 affidavits, that will amount to approximately a  
3 million pages to be copied. Approximately 80,000  
4 pages of copies were made before the rule came into  
5 force and they, of course, will be entirely useless  
6 if they cannot be used as excerpts.

7 With regard to other material, for example,  
8 the Allied Translation and Interpreters Section  
9 reports, ATIS reports, it is desired to use in evi-  
10 dence extracts from four of those reports. The re-  
11 ports run into, in some cases, one hundred pages in  
12 full, and only approximately one page from each is  
13 desired to be used. The extract is taken from a sec-  
14 tion of the report, which is different from other  
15 portions of the report, and the prosecution could, of  
16 course, copy the whole of the particular section from  
17 which the excerpt is made if it is excused from copy-  
18 ing the whole of the report. The complete volume of  
19 the report will, of course, be the original document  
20 which will be introduced in evidence. There are  
21 other proceedings, such as the transcript proceedings  
22 of Japanese investigation into the massacre at Naha.

23 MR. McMANUS: Mr. President, if the Tribunal  
24 pleases, I ask that counsel be requested to refrain  
25 from characterizing, using such words as "massacre at



1 Naha." That is to be determined by the Court.

2 THE PRESIDENT: You are unduly sensitive.  
3 These terms are employed by the prosecution at times.  
4 It does not follow the Court accepts them.

5 MR. JUSTICE MANSFIELD: The proceedings  
6 relating to the alleged massacre run into a number of  
7 pages, and it is intended, or desired, by the prose-  
8 cution to use only the evidence of two witnesses who  
9 were eyewitnesses of the events which form the sub-  
10 stance of the alleged massacre; and it is, therefore,  
11 desired to be excused from copying the whole of the  
12 proceedings, and in place of that that the evidence  
13 of two witnesses, eyewitnesses, alone, the complete  
14 evidence, be copied so that they can be distributed  
15 to the defense. The complete transcript runs into  
16 over three hundred pages, and the number of pages to  
17 be used will be very much less than that.

18 I, therefore, ask the Tribunal grant the appli-  
19 cation of the prosecution with regard to the documents  
20 which I have mentioned and allow the prosecution to  
21 provide copies of the excerpts for the defense, and  
22 that the whole document will, of course, in the ordi-  
23 nary course be presented to the Secretariat and will  
24 be available for use by the defense.  
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1 THE PRESIDENT: Mr. McCormack.

2 MR. McCORMACK: If the Tribunal please, on  
3 July 3 last, it is my understanding that the Court,  
4 after taking some time during a recess, entered an  
5 order for the prosecution to introduce these ex-  
6 cerpts, to file the originals, to lodge them with  
7 the Clerk of the Court, to give the defense counsel  
8 ample facilities to examine them; and then, in one  
9 month from July 3, copies of these documents were  
10 supposed to be furnished the defense; thirdly, that  
11 the defense was to be furnished the addresses of the  
12 affiants in these affidavits and reports to the  
13 extent to which they are available to the prosecu-  
14 tion.

15 I might mention further that things the  
16 counsel says are unfamiliar to us. He steps up with-  
17 out any prior notice on our part and addresses the  
18 Court on this matter. It would seem to the defense  
19 more logical in a proper procedure if, before these  
20 matters are brought to the Tribunal, the defense  
21 were furnished copies of the excerpts that they  
22 intend to submit in evidence. Under those circum-  
23 stances, we would have a better idea about what is  
24 going on, what is trying to be introduced, and better  
25 able to defend ourselves against this particular

1 motion.

2 MR. JUSTICE MANSFIELD: I've been informed  
3 that I said that the whole report would be in evi-  
4 dence. That is not correct. The whole report will  
5 be produced, of course, but only the particular part  
6 relied upon will be in evidence. I desire my previous  
7 statement to be corrected to that extent.

8 I would suggest, in reply to what has been  
9 stated, on the fifth of July the Court stated that  
10 it would reconsider the matter. Speaking from  
11 memory, it was either the fifth or sixth of July  
12 when the Court said it would reconsider the matter,  
13 and also no order was made in connection with ATIS  
14 and other reports by the Court; and, if the copies  
15 of excerpts are furnished to the defense as re-  
16 quested by the defense, then, of course, it will  
17 mean, in the event of the whole affidavit being put  
18 in, the work will have to be done twice, and in-  
19 stead of one million pages, there will probably be  
20 two million.

21 MR. FURNESS: If the Court please, the de-  
22 fense understands that this substantially has already  
23 been decided in open Court. Certain questions were  
24 raised, after that decision in the afternoon of the  
25 third, by Mr. Justice Mansfield. The Court took



1 those under consideration. We also remember that  
2 the Court considered the matters in Chambers and, at  
3 that time, reached no decision on those matters. I  
4 think I'm correct on that.

5 We ask the Court to adhere to its decision  
6 and, certainly, to give us the names and addresses  
7 of all persons making the affidavits, so far as they  
8 are available, the names and addresses of all persons  
9 making reports which have been mentioned, ATIS and  
10 otherwise.

11 THE PRESIDENT: Some modification on the  
12 decision appears to be necessary because the prose-  
13 cution haven't copies of all the documents so that  
14 they may comply with the decision.

15 MR. FURNESS: My understanding is that the  
16 Court ordered them to make copies and that the dif-  
17 ficulties are mechanical difficulties which could be  
18 solved, and those mechanical difficulties should not  
19 be taken advantage of in order not to comply with  
20 the Court's order.

21 THE PRESIDENT: The Court will reconsider  
22 the whole matter.

23 Mr. Darsey.

24 MR. DARSEY: Mr. President, I should like  
25 at this time to present some of the counsel in charge

1 of the China Aggression phase of the case who, at  
2 this time, pursuant to order of the Court, will pre-  
3 sent the testimony of some of the Chinese witnesses  
4 who have to return to China.

5 Colonel Thomas H. Morrow, member of the  
6 Ohio Bar, on leave from the Common Pleas Court of  
7 that State;

8 Kenneth N. Parkinson, member of the Court of  
9 the District of Columbia and the United States  
10 Supreme Court; and

11 Major James H. Brock of the Boston, Massa-  
12 chusetts Bar.

13 COLONEL MORROW: If the Tribunal please --

14 THE PRESIDENT: Before you commence, Major,  
15 we have just been informed that the temporary relief  
16 we got this morning from that blast of cold air is  
17 not likely to last because the water supply will not  
18 allow it. We are now about to experience the same  
19 severe heat that we did on Wednesday when we were  
20 forced to adjourn. We propose to adjourn now until  
21 we are advised that the air conditioning has been  
22 installed.

23 We will adjourn to a date to be fixed.

24 (Whereupon, at 1010, an adjourn-  
25 ment was taken.)

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